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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/128,504	08/03/98	PORTER	E PORTER-1

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PM82/1008

GORDON, S

ART UNIT	PAPER NUMBER
3612	S

**DATE MAILED:** 10/08/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

## Office Action Summary

Application No.	09/128,504	
Examiner	Porter et al Gordo	
		Group Art Unit 3612

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

### Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication .
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

### Status

- Responsive to communication(s) filed on 11/21/98.
- This action is FINAL.
- Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

### Disposition of Claims

- Claim(s) 1-20 is/are pending in the application.
- Of the above claim(s) 15-20 is/are withdrawn from consideration.
- Claim(s) \_\_\_\_\_ is/are allowed.
- Claim(s) 1-14 is/are rejected.
- Claim(s) \_\_\_\_\_ is/are objected to.
- Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

### Application Papers

- See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.
- The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- The specification is objected to by the Examiner.
- The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119 (a)-(d)

- Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- All  Some\*  None of the CERTIFIED copies of the priority documents have been received.
- received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
- received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

### Attachment(s)

- Information Disclosure Statement(s), PTO-1449, Paper No(s). 2  Interview Summary, PTO-413
- Notice of References Cited, PTO-892  Notice of Informal Patent Application, PTO-152
- Notice of Draftsperson's Patent Drawing Review, PTO-948  Other \_\_\_\_\_

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**DETAILED ACTION**

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-14, drawn to an organizer apparatus, classified in class 410, subclass 129.
  - II. Claims 15-20, drawn to a method of deploying an organizer in a vehicle, classified in class 414, subclass 809.
2. The inventions are distinct, each from the other because of the following reasons:

Inventions II and I are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the method as claimed can be practiced by another and materially different apparatus such as one not requiring support members/legs per se.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.
5. During a telephone conversation with Ken Nash on 9/29/99 a provisional election was made without traverse to prosecute the invention of group I, claims 1-14. Affirmation of this

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election must be made by applicant in replying to this Office action. Claims 15-20 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(l).

7. The disclosure is objected to because of the following informalities: on page 12 - line 18, “rear” is apparently misspelled. On page 14 - line 8, --8-- should apparently be inserted after “Fig.”. On page 15 - line 13 and page 16 - line 13, one of the duplicate periods should be deleted.

Appropriate correction is required.

8. Claims 1-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

✓ Re claim 1, line 9 is somewhat confusing, and --said-- could be inserted before both “plug” and “support” of the line to clarify the claim in this regard.

✓ Re claim 2, it is noted --and-- should be inserted at the beginning of the last line.

✓ Re claim 3, line 3 is somewhat confusing, and --said-- could be inserted before “plug” of the line to clarify the claim in this regard as best understood.

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~~Re claim 5, "a differing numbers"~~ is awkward/confusing, and "a" should apparently be deleted from the term for clarity.

~~Re claim 8, the term "elongate" in each of lines 5, 8, and 9 should be deleted for consistency/clarity.~~

~~Re claim 10, the recited joint members apparently constitute a double inclusion of the joint member of intervening claim 9. In other words, it is not clear if the recited joint members of claim 10 include or are in addition to the joint member of claim 9. Claims 11, 12, and 13 are similarly confusing.~~

With additional regard to claim 11, lines 3-6 are somewhat confusing. As best understood, "tubular support legs" of line 3, "two of" of line 4, "support legs" of line 5, and "to" of line 6 could be replaced with --said tubular support members--, --two additional ones of--, -- said support members--, and --respect to-- respectively to clarify the lines.

~~With additional regard to claim 12, "legs" in lines 3 and 5 should each be --members-- for consistency/clarity.~~

~~With additional regard to claim 13, "legs" in lines 3 and 5 should each be --members-- for consistency/clarity.~~

Re claim 14, "elongate" in line 1 should be deleted for consistency/clarity.

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1-9 and 13-14, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Boudah.

Boudah teaches a cargo rack organizer usable in a truck bed. The device includes support legs 11, 18+, joints 14+ with plugs (see fig 5) for telescopic engagement with the legs, and locking members/pins 13 as broadly claimed.

Re claims 1+ and 8+, while it appears Boudah reads on all of the claim language as broadly recited, it should be noted, in as much as the vehicle and bed per se are not positively recited elements of the instant claimed invention, the functional/positional language relating thereto is given little patentable weight. Note different configurations comprising differing numbers of joint and support elements are possible.

Re claim 5, at least joint elements 14 and 2+ define differing numbers of plugs as broadly claimed.

Re claim 7, elements 13 define lock pins entering the support member apertures.

Re claim 14, the framework mates with a bed sidewall profile. However, in as much as the vehicle and bed per se are not positively recited elements of the instant claimed invention, the functional/positional language relating thereto is given little patentable weight.

11. Claims 1-4, 8, 9, 10, and 12, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Weston.

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Weston teaches a cargo rack organizer usable in a truck bed. The device includes support legs 64, 28+, joints 34+ with plugs (see fig 7) for telescopic engagement with the legs, and locking members/pins as broadly claimed.

Re claims 1+ and 8+, while it appears Weston reads on all of the claim language as broadly recited, it should be noted, in as much as the vehicle and bed per se are not positively recited elements of the instant claimed invention, the functional/positional language relating thereto is given little patentable weight. Note different configurations comprising differing numbers of joint and support elements are possible.

Re claims 10 and 12, at least connector 34+ (Fig 7) defines 6 plugs. Multiple connectors 34+ are utilized (see fig 5 etc.) which read on the various connectors comprising six, five, four plugs etc. as broadly defined.

12. Claim 11 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2<sup>nd</sup> paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Note fig 21 embodiment of Bartkus teaches a bed organizer comprising both horizontal and vertical support members.

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14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Gordon whose telephone number is (703) 308-2556.

stg

October 6, 1999



STEPHEN T. GORDON  
PRIMARY EXAMINER